



October 30, 2001

Ms. Trudi Dill
Deputy City Attorney
City of Temple
Municipal Building
Temple, Texas 76501

OR2001-4974

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154156.

The City of Temple (the "city") received a request for copies of any and all documents concerning property damage, and scene or injury photographs "taken and/or obtained by the City of Temple and/or its employees, representatives, or insurers," related to a specified auto accident. You state that the city will release to the requestor, upon receipt of allowed costs, duplicates of documents and photographs that have been disclosed to other claimants. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us that the city is not in possession of investigation reports from the adjuster for the city's insurer. You do not indicate, however, whether the city owns or has a right of access to the reports. The Public Information Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. Accordingly, to the extent that the city owns or has a right of access to the adjuster's investigation reports held by the city's insurer, such reports are subject to the Public Information Act, and must be released to the requestor. See Gov't Code § 552.301, .302.

As to the submitted information, we first address a procedural matter. Among other requirements, a governmental body is required to submit to this office within fifteen business days of receiving an open records request general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code §§ 552.301(e)(1)(A), (D). In one of the two reports comprising the submitted information, the text recites that the report contains four attachments. However, only the two reports comprise the submitted information, and the city asserts no claims as to any other documents. Thus, the department appears to have failed to comply fully with section 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302. Because you submitted neither copies of such information nor comments addressing any claims of exception concerning it, we have no basis to conclude that it is excepted from disclosure. Therefore, to the extent that the city possesses information responsive to the request other than the submitted information, such information must be released to the requestor. *See* Gov't Code §§ 552.301(e)(1)(A), (D), .302.

As to the submitted information, section 552.022 of the Government Code states in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category is “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]” *Id.* § 552.022(a)(1). The information you have submitted consists of two completed reports made for the city and thus is subject to section 552.022(a)(1). Section 552.103 is a discretionary exception under the Public Information Act and, as such, does not constitute “other law” that makes information “expressly confidential.” *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation, and does not itself make information confidential).¹ Therefore, the city may not withhold the submitted information under section 552.103, and it must be released to the requestor.

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general).

In summary, to the extent that the city owns or has a right of access to responsive information possessed by its insurer, the information must be released to the requestor pursuant to section 552.302 of the Government Code. To the extent that the city possesses any information responsive to the request other than that submitted for review, such information must be released to the requestor pursuant to section 552.302. The city must release to the requestor the submitted information pursuant to section 552.022(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

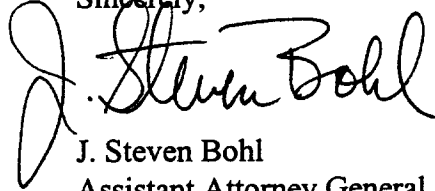
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steven Bohl". The signature is written in a cursive, flowing style with a large initial "J".

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 154156

Enc: Submitted documents

c: Mr. Vic Feazell
Feazell, Rosenthal & Watson
6601 Vaught Ranch Road, Suite 200
Austin, Texas 78730
(w/o enclosures)